just and expedient, and to provide for their enforcement *in rem.*" See also *Baizley* v. *The Odorilla,* 121 Pa. 231, 1 L. R. A. 505; *City of Erie* v. *Canfield,* 27 Mich. 479, and note; 15 COL. LAW REV. 343. "If the contract is not of a maritime nature, it is of no concern to the federal jurisdiction what remedies the State may provide, whether *in rem* or otherwise." Per SEVERENS, J., in *The Winnebago,* 141 Fed. 945.

BANKRUPTCY—INVOLUNTARY BANKRUPTCY AS ANTICIPATORY BREACH OF CONTRACT.—Claimant, a hotel company, granted baggage and livery privileges to the bankrupt for a term of five years in consideration of the bankrupt's agreement to pay $350.00 per month. The adjudication in involuntary bankruptcy occurred while the contract had more than four years to run, but the trustee did not elect to assume its performance. *Held,* the bankruptcy proceedings amount to an anticipatory breach of the contract, and the claim founded upon this breach is provable under § 63a (4) of the Bankruptcy Act. *Central Trust Co., Trustee,* v. *Chicago Auditorium Association,* 36 Sup. Ct. 412.

The courts seem to agree that bankruptcy is not an anticipatory breach of a covenant in a lease to pay rent. *Ex parte Houghton,* Fed. Cas. No. 6, 725; *In re May,* Fed. Cas. No. 9325; *Bailey* v. *Loeb,* Fed. Cas. No. 739; *In re Jefferson,* 93 Fed. 948; *Atkins* v. *Wilcox,* 105 Fed. 595; *In re Mahler,* 105 Fed. 428; *In re Arnstein,* 101 Fed. 706; *In re Hays, F. & W. Co.,* 117 Fed. 789; *In re Rubel,* 166 Fed. 131; *Bray* v. *Cobb,* 100 Fed. 270. (Reversed in *Cobb* v. *Overman,* 109 Fed. 65 on other grounds); *Watson* v. *Merrill,* 136 Fed. 359; *In re Hinckel Brewing Co.,* 123 Fed. 942; *In re Roth & Appel,* 181 Fed. 667; *In re Rennewell,* 119 Fed. 139; *Colman Co.* v. *Withoft,* 195 Fed. 250; *Cotting* v. *Hooper Lewis & Co.,* 220 Mass. 273. Some of these courts support the decisions upon the theory that the bankrupt lessee receives no discharge from paying future rents; while the others say that bankruptcy terminates the relation of landlord and tenant and destroys all future liability. *In re Inman & Co.,* 171 Fed. 185, in agreeing with this latter view considers that the relation of employer and employee is analogous to the relation of landlord and tenant and that involuntary bankruptcy therefore constitutes no breach of an executory contract to pay for personal services, since the contract has come to an end (at least when the bankrupt is a partnership and therefore dissolved by operation of law). The same court on the authority of this case and of *Malcolmson* v. *Wappo Mills, et al.,* 88 Fed. 680 and *People* v. *Globe Mutual Life Insurance Co.,* 91 N. Y. 174, held that involuntary bankruptcy constituted no breach of an executory contract to buy merchandise. *In re Inman & Co.,* 175 Fed. 312, *accord*: *In re Imperial Brewing Co.,* 143 Fed. 579. The latter court, however, was of the opinion that the contract continued in full force between the claimant and the bankrupt. The holding in the principal case is supported by the following: *Ex Parte Pollard,* Fed. Cas. No. 11, 252; *In re Pettingill & Co.,* 137 Fed. 143; *In re Stern,* 116 Fed. 604; *In re Neff,* 157 Fed. 57; *Pennsylvania Steel Co.* v. *New York City Ry. Co.,* 198 Fed. 721; *Board of Commerce of Ann Arbor, Mich.* v. *Security Trust Co.,* 225 Fed. 454. In the last-mentioned case, the contract was executory only on the part of the bankrupt. The holding in *In re Swift,*

112 Fed. 35, that an adjudication in bankruptcy which resulted in depriving the bankrupt broker of stock which he had agreed to transfer, amounts to a breach, is referred to without criticism in *In re Imperial Brewing Co., supra.* The Supreme Court would probably not hold bankruptcy to be an anticipatory breach where it appears that the bankruptcy proceedings have not impaired the ability of the bankrupt to perform his part of the contract. But it is to be regretted that the rule of the court, in the principal case, even as thus limited and however beneficial it may be in other respects, furnishes a rather simple method for an unscrupulous insolvent debtor to defraud his creditors by making "improvident" executory contracts with his confederates.

BANKRUPTCY—POWER OF DISTRICT COURT TO DETERMINE VALIDITY OF TAXES.—A corporation made a padded return of its assets to the state tax commissioner. Later the corporation was adjudicated bankrupt. *Held,* the claim of the state for the amount of the assessment based on the padded return should not be allowed. *In re E. C. Fischer Corp.* (1915) 229 Fed. 316.

§ 64 of the Bankruptcy Act, which gives priority to claims for taxes, provides that the bankruptcy court shall have the power to determine the amount and legality of such taxes. The Supreme Court of the United States held that this provision gave the bankruptcy court power to review a tax assessed by a state board upon a corporation which failed to make a tax return although the state statute provided that such tax should be final. *New Jersey* v. *Anderson,* 203 U. S. 483. In *In re Otto Freund Arnold Yeast Co.,* 178 Fed. 305, the tax was regularly assessed and levied and was neglected up to a time when under the state law no review or objection to the legality of the tax was possible, but the court held that the statutory legality of the tax from the standpoint of regularity is no bar to the bankruptcy court's power to determine whether the property supposed to be taxed actually existed. *Accord*: *In re Selwyn Importing Co.* (D. C.) 18 Am. B. R. 190; *In re Heffron Co.,* 216 Fed. 642. But in *In re Bushnell,* 215 Fed. 651, the court was of the opinion that the failure of the bankrupt to pursue the remedy allowed by the statute of the state deprived his trustee of the right to complain that the assessments are excessive. In this case, as in the principal case, the assessments were based upon the valuation as evidenced by the bankrupt's returns. In those cases cited *supra,* in which the state's claim was not allowed, the courts took the view that the jurisdiction of the bankruptcy court to determine the amount and legality of the tax is not barred by the fact that the tax was assessed, levied and declared to be proper by competent state authority. The effect of such a holding is to give the trustee a greater right than the bankrupt himself had, so far as jurisdictional questions are concerned. The principal case, however, goes much further in holding that the padded tax return does not estop the trustee, although it would have estopped the bankrupt before the institution of the bankruptcy proceedings.

BILLS AND NOTES—BONA FIDE PURCHASER.—The officers of the defendant corporation each morning signed in blank sufficient checks to meet the demands of the day. These checks were kept in the office under conditions that